

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Determine  
Whether Baseline Allowances for Residential  
Usage of Gas and Electricity Should Be Revised.

Rulemaking 01-05-047

**RULING REGARDING  
NOTICES OF INTENT TO CLAIM COMPENSATION**

**Summary**

This ruling responds to the notices of intent to claim compensation (NOIs) that Aglet Consumer Alliance (Aglet), The Utility Reform Network (TURN), Greenlining Institute/Latino Issues Forum (Greenlining/LIF) and Disability Rights Advocates (DRA) separately filed in this docket. After consultation with the assigned Commissioner, I find each listed intervenor eligible for compensation in this proceeding pursuant to Pub. Util. Code § 1804.<sup>1</sup>

These parties should see to it that they do not duplicate each other's efforts. Such duplication may result in a reduction in the amount of compensation ultimately awarded.

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<sup>1</sup> All statutory references are to the Public Utilities Code.

## **NOI Requirements**

### **A. Timely Filing**

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” The prehearing conference in this proceeding was held on June 21, 2001. The due date for NOIs was July 23, 2001. TURN timely filed on July 19, 2001, and Aglet and DRA filed timely on July 20, 2001. Greenlining/LIF filed its NOI late, on July 25, 2001, so we must consider whether that late filing can be excused.

Greenlining/LIF states that its delay “was due to their finite resources in light of Commission delays in processing numerous outstanding requests for award of intervenor compensation . . . .” In Decision (D.) 00-03-044, the Commission stated that there is no rule that exceptions to the NOI filing deadline would never be granted.<sup>2</sup> Indeed, we have granted exceptions where, as here, the NOI is but a few days late. As we said in D.98-04-059, the NOI provides “a basis for a more critical preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented.”<sup>3</sup> Where the NOI is only a few days late, it still serves this necessary informational purpose. Moreover, Greenlining/LIF has cited a reasonable explanation for its delay. Therefore, we excuse Greenlining/LIF’s untimely NOI filing and proceed to consider its participation on the merits.

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<sup>2</sup> D.00-03-044, *mimeo.* at 2-4.

<sup>3</sup> D.98-05-059, *mimeo.* at 27.

## **B. Customer Status**

Pursuant to D.98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and whether the intervenor is (1) a participant representing consumers, (2) a representative authorized by a customer, or (3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.<sup>4</sup>

Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

### **1. Aglet**

Aglet meets the third definition of customer: it is an unincorporated nonprofit association registered with the State of California Secretary of State. Aglet is a group authorized pursuant to its articles of organization and bylaws<sup>5</sup> to represent and advocate the interests of residential and small commercial customers of electric, gas, water, and telephone utilities in California. While the

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<sup>4</sup> “When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a *participant* representing consumers, as a *representative* authorized by a customer, or as a representative of a *group or organization* that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers.” D.98-04-059, *mimeo.* at 28-29 (emphasis in original).

<sup>5</sup> Aglet provided a copy of its articles and bylaws to an NOI it filed on June 11, 1999 in Application (A.) 99-03-014. At the present time, all of Aglet’s members are residential utility customers, including customers of PG&E. Approximately 30% of Aglet’s members also operate small businesses with separate energy or telephone utility service.

Commission's Office of Ratepayer Advocates represents and must balance the interests of all ratepayers, Aglet represents the specific interests of small customers, ratepayers who would not otherwise be adequately represented in this proceeding.

## **2. TURN**

TURN also meets the third definition of customer, as set forth in § 1802(b): it is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.<sup>6</sup> TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN qualifies as a customer because it is an organization authorized by its articles of incorporation to represent the interests of consumers, a portion of which are residential customers.

## **3. Greenlining/LIF**

Like Aglet and TURN, Greenlining/LIF meet the third definition of customer, as defined in § 1802(b), and once again the comparison standard applies.<sup>7</sup> Both Greenlining/LIF are 501(c)(3) organizations authorized by their

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<sup>6</sup> D.98-04-059 directed intervenors either to file their articles of incorporation/by-laws with the NOI, or to provide a reference to a previous filing. (*Id.* at 30.) TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in Application (A.) 98-02-017. TURN has approximately 30,000 dues paying members, the majority of whom it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

<sup>7</sup> Greenlining/LIF provided the relevant portions of the articles of incorporation of both Greenlining and LIF in its an NOI filed on March 4, 1999 in A.98-12-005. Article III, Section 17 of LIF's by-laws likewise authorizes it to represent the interests of "low-income communities, Latinos and residential ratepayers." Article II, Section 17 of Greenlining's by-laws authorizes it to represent the "interests of low income

*Footnote continued on next page*

bylaws to represent, among others, low-income communities and residential ratepayers before regulatory agencies and courts. The interests that Greenlining/LIF represent, specifically low-income, minority and limited-English speaking communities, are frequently underrepresented in Commission proceedings.

#### **4. DRA**

DRA also fits the third category. Its articles of incorporation<sup>8</sup> state that it is a 501(c)(3) organization established, among other things, to engage in public interest litigation and advocacy to protect the rights of people with disabilities. The rights of the disabled are directly implicated by the medical baseline program, one of the aspects of baseline at issue in this proceeding.

#### **C. Significant Financial Hardship**

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1802(g) defines “significant financial hardship”:

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of

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communities, minorities and residential ratepayers" before regulatory agencies and courts. Greenlining/LIF estimate that about 90% of LIF’s members are residential ratepayers, with 10% being small business customers. They estimate that about 80% of Greenlining’s members are residential ratepayers, with 20% being small business customers.

<sup>8</sup> DRA submitted its articles of incorporation shortly after filing its NOI in this proceeding.

the group or organization is small in comparison to the costs of effective participation in the proceeding.

Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI, or alternatively in the request for an award of compensation.

### **1. Aglet**

A rebuttable presumption of eligibility exists for Aglet. On September 22, 2000, I issued a written ruling in a separate proceeding, A.99-09-029, finding that Aglet had made a showing of significant financial hardship, had met the requirements of Section 1804(a), and was eligible for compensation in that proceeding. Because this proceeding commenced on May 24, 2001, within one year of my September 22, 2000 ruling, a rebuttable presumption exists that Aglet is eligible for compensation in this proceeding. No party has attempted to rebut that presumption. Because Aglet has also made an independent showing of financial hardship in this proceeding, I find that Aglet meets the financial hardship requirement.

Aglet asserts that the cost of its participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. Aglet's members are small residential and commercial customers whose individual interests in this proceeding are small relative to the costs of participation. Most if not all of the businesses owned by Aglet members are sole proprietorships without employees. None is a large commercial or industrial customer that might use great quantities of gas or electricity. Thus, Aglet meets the "significant financial hardship" requirement. Aglet should be aware that a finding of significant financial hardship in no way ensures compensation § 1804(b)(2)).

## **2. TURN**

A rebuttable presumption of eligibility also exists for TURN. On December 29, 2000, Judge Robert Barnett issued a written ruling in A.99-10-023 finding that TURN had made a showing of significant financial hardship, had met the requirements of Section 1804(a), and was eligible for compensation in that proceeding. Because this proceeding commenced on May 24, 2001, within one year of ALJ Barnett's December 29, 2000 ruling, a rebuttable presumption exists that TURN is eligible for compensation in this proceeding. No party has attempted to rebut that presumption. If any party attempts to rebut this presumption, TURN is granted leave to furnish evidence of its significant financial hardship within 10 days of the rebuttal's filing.

TURN did not otherwise attempt to establish financial hardship in its NOI.

## **3. Greenlining/LIF**

Greenlining/LIF chose to defer establishing financial hardship until it files its request for compensation, as is its right. However, I note that on April 20, 2001, Judge Christine Walwyn found that Greenlining/LIF had met the financial hardship test. Since that ruling occurred within one year of the initiation of this proceeding, a rebuttable presumption of Greenlining/LIF's financial hardship exists. If any party attempts to rebut this presumption, Greenlining/LIF is granted leave to furnish evidence of its significant financial hardship within 10 days of the rebuttal's filing.

## **4. DRA**

DRA states that because it is a non-profit organization, does not take fees from its clients, and receives no governmental support, participation in this proceeding poses a significant hardship. This showing does not meet the

requirement of 1802(g) that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. However, because DRA may, at its option, establish financial hardship in its NOI or its request for compensation, we will allow DRA to defer this showing until it seeks compensation.

#### **D. Nature and Extent of Planned Participation**

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted.

##### **1. Aglet**

Aglet meets this requirement: thus far it has participated in two PHCs, reviewed utility discovery responses, and discussed issues with TURN. Depending on utility positions, it expects to address technical issues surrounding average residential usage, baseline climate zones, and suggestions for legislative action.

##### **2. TURN**

TURN also meets the requirement that it spell out its planned participation: it expects to pursue discovery, prepare testimony, participate in any hearings and submit briefs and comments as required.

##### **3. Greenlining/LIF**

Greenlining/LIF also meets the requirement that it spell out its planned participation: it states it intends to attend at least some of the public hearings noticed, to attend regulatory hearings before the Commission and to represent low-income concerns about any changes to baseline. Specifically, Greenlining/LIF states it will be examining the effect of proposed baseline modifications on the vulnerable customers and constituencies it represents, with



the objective of ensuring that energy remains affordable for large low-income families and those families sharing dwellings out of necessity. At the same time, it states it will seek solutions to the baseline allocation that are not administratively burdensome or subject to potential abuses.

#### **4. DRA**

DRA also meets the planned participation requirement. DRA states its plan to focus on medical baseline issues, and indeed DRA participated actively during the first phase of this proceeding, which addressed that issue.

#### **E. Itemized Estimate of Compensation**

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive.

##### **1. Aglet**

Aglet estimates a total projected budget of \$10,780 for this case, based on proposed hourly rates that Aglet will address in its request for compensation. The estimate breaks down as follows:

<b>Amount</b>	<b>Description</b>
	<b>Fees</b>
\$ 8,800	40 hours of professional time by James Weil at \$220/hour
\$ 1,650	15 hours of travel and compensation time at \$110/hour
	<b>Costs</b>
\$ 120	Copies

\$ 100	Postage
\$ 100	Travel costs
\$ 10	Fax charges
\$10,780	<b>Total</b>

Aglet satisfactorily presents an itemized estimate of the compensation it expects to request. However, the number of hours and the hourly rates may be excessive. As must any intervenor, Aglet must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

## 2. TURN

TURN estimates a total projected budget of \$81,000 for this case, based on proposed hourly rates that TURN will address in its request for compensation. The estimate breaks down as follows:

<b>Amount</b>	<b>Description</b>
	<b>Fees</b>
\$47,500	250 hours of attorney time by Matthew Freedman at \$190/hour
\$16,000	50 hours of attorney time by Robert Finkelstein at \$320/hour
\$ 7,000	20 hours of attorney time by Michel Florio at \$350/hour
\$10,000	100 hours of expert time by Jeff Nahigian at \$100/hour
	<b>Costs</b>
\$ 500	Miscellaneous
\$81,000	<b>Total</b>

TURN satisfactorily presents an itemized estimate of the compensation it expects to request. However, the number of hours and the hourly rates may be excessive. As must any intervenor, TURN must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

### **3. Greenlining/LIF**

Greenlining/LIF estimates a total projected budget of \$129,750 for this case, based on proposed hourly rates that Greenlining/LIF will address in its request for compensation. The estimate breaks down as follows:

<b>Amount</b>	<b>Description</b>
	<b>Fees</b>
\$ 17,500	50 hours of attorney time by Robert Gnaizda at \$350/hour
\$ 37,500	125 hours of attorney time by Susan Brown at \$300/hour
\$ 10,250	50 hours of attorney time by Enrique Gallardo at \$205/hour
\$ 20,500	100 hours of attorney time by Itzel Barrio at \$205/hour
\$ 12,500	50 hours of expert time by John Gamboa at \$250/hour
\$ 12,500	50 hours of expert time by Viola Gonzales at \$250/hour
\$ 10,000	100 hours of time by policy interns and Greenlining fellows at \$100/hour
	<b>Costs</b>
\$ 5,000	Postage, copies, deliveries, supplies and telephone
\$ 4,000	Travel
\$129,750	<b>Total</b>

Greenlining/LIF satisfactorily presents an itemized estimate of the compensation it expects to request. However, the number of hours and the hourly rates may be excessive. As must any intervenor, Greenlining/LIF must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

#### **4. DRA**

DRA stated that it expects its fees to be approximately \$35,000 and its costs to be approximately \$10,000, but did not explain further. Because such explanation is a prerequisite to a finding of eligibility for intervenor compensation, DRA shall submit a breakdown similar to those furnished by the intervenors listed above within 10 days of mailing of this ruling. If its submission is satisfactory, DRA will be deemed to have met this requirement without further ruling. If the showing is not adequate, I will so notify DRA.

As must any intervenor, DRA must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

#### **IT IS RULED that:**

1. Aglet Consumer Alliance (Aglet) has established all elements necessary to a finding of its eligibility for intervenor compensation.
2. The Utility Reform Network (TURN) has established all elements necessary to a finding of its eligibility for intervenor compensation. However, should any party attempt to rebut the presumption based on an earlier ruling that TURN will face significant financial hardship in participating in this proceeding, TURN is granted leave to furnish evidence of its significant financial hardship within 10 days of the rebuttal's filing. If it does not do so, the Commission will determine financial hardship when TURN submits its request for compensation.
3. Greenlining/Latino Issues Forum (Greenlining/LIF) has established all elements necessary to a finding of its eligibility for intervenor compensation. However, should any party attempt to rebut the presumption based on an earlier ruling that Greenlining/LIF will face significant financial hardship in participating in this proceeding, Greenlining/LIF is granted leave to furnish

evidence of its significant financial hardship within 10 days of the rebuttal's filing. If it does not do so, the Commission will determine financial hardship when Greenlining/LIF submits its request for compensation.

4. Disability Rights Advocates (DRA) has met some, but not all, of the requirements of eligibility for intervenor compensation. It has not established financial hardship, but may do so with its request for compensation. It has also not adequately itemized its planned expenses for this proceeding. DRA shall submit a breakdown similar to those furnished by the intervenors listed above within 10 days of mailing of this ruling. If its submission is satisfactory, DRA will be deemed to have met this requirement without further ruling. If the showing is not adequate, that I will so notify DRA.

5. Aglet is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

6. A finding of eligibility in no way assures compensation.

7. Intervenors shall make every effort to reduce duplication of contribution.

Dated March 7, 2002, at San Francisco, California.

/s/ SARAH R. THOMAS

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Sarah R. Thomas  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Ruling Regarding Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated March 7, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.